APPENDIX.

Comments of the Securities and Exchange Commission upon the Abrams' Application.

CLEVELAND TERMINALS BUILDING COMPANY

Specific Recommendations for Allowances

	APPLICANT	REQUESTED		RECOMMENDED		
		Fees	Expenses	Fees	Expenses	Suggested Allocation
28.	**Joseph L. Stern, Meyer Abrams and Harry J. Myerson** Counsel for Gochenour, et al.	$172,200.00	$6,126.35	$18,000.00	$5,339.51	General 66⅔% Tower 33⅓%

COMMENTS

These attorneys represented Tower bondholders owning approximately $85,000 of bonds. In 1940 they undertook also to represent a note holder of Van Sweringen Corporation, the parent company and principal unsecured creditor of CTB. These interests were in conflict with respect to the claim of Van Sweringen Corporation against CTB and with respect to the CTB plan, since the Tower bondholders were primarily secured creditors. However, it appears that the litigation concerning the Van Sweringen Corporation claim was terminated prior to the applicants' representation of the Van Sweringen Corporation note holder, and it further appears that the applicants were not active in connection with plan negotiations after that time. Presumably, their inactivity in this connection was in recognition of the conflict of interests. Although the question is not free from doubt, the recommendations below are predicated on the assumption that the doctrine of the *Woods* case is not applicable to bar compensation under these circumstances.

The applicants claim responsibility for the appointment of trustees for Van Sweringen Corporation and supervisors for CTB. Services in connection with the appoint-

ment of trustees for Van Sweringen Corporation are not compensable in this proceeding. As for the CTB supervisors, the record fails to show that they were appointed in response to the applicants' objections to continuance of the debtor in possession. On the contrary, the court's order of February 8, 1938 appointing supervisors for CTB was based on a report of the Special Master recommending the appointment of a trustee or trustees for CTB in view of the resignations of Bradley and Murphy as its principal officers. The Master stated that loss of morale and efficiency was threatened "unless disinterested management responsible to the court only, be promptly installed." It further appears that there was no opposition to the Master's recommendation except from counsel for CTB and counsel for one of the creditors.

The applicants apparently instigated the attack on the 1937 plan and were instrumental in bringing about its defeat. The plan does not appear to have received much support from any source other than the debtor itself and it cannot be said that the plan would have been approved in the absence of the opposition from the applicants. However, the time spent in opposing this plan would seem to be compensable. Although the plan ultimately approved and confirmed bears some similarity to the type of plan originally advocated by the applicants, it does not appear that they were active either in the negotiation or formulation of that plan. The services rendered in connection with their unsuccessful attempt to have the Tower income sequestered in a separate fund and with respect to the development of possible causes of action and the appointment of an examiner have not contributed any direct benefit to the estate. In this connection, it may be noted that the applicants' unsuccessful suit against the indenture trustee for the Tower bonds on similar causes of action will result in burdening the trust estate with the cost (over $18,000 of the amount requested is allowed) of defending that litigation. For the

services described thus far $6,000 would seem to be the maximum amount of compensation chargeable against the Tower funds.

Most of the services rendered by the applicants were in connection with the reduction or elimination of large unsecured claims against CTB. After extensive litigation, applicants were successful in having approximately $6,000,000 of the $27,777,718 Morgan claim subordinated to the claims of other general creditors. No part of the claim based on the Tower bonds had been classified as unsecured at the time of this litigation and it is consequently difficult to understand what interest applicants were representing during this period. However, such litigation contributed in establishing a proper classification of unsecured claims and in that sense was beneficial to the general estate. In response largely to the Commission's opposition to the 1938 Tower plan, a part of the Tower bond claim was eventually classified as a deficiency claim with the result that the Tower bondholders have benefited somewhat from the reduction of the Morgan and other large unsecured claims. Such benefit is not substantial, however, since the deficiency claim of the Tower bonds is less than 8½% of the total unsecured claims and the value of the assets available for unsecured creditors would probably not exceed $2,000,000. The applicants also filed early objections to the principal as well as the interest of the Van Sweringen Corporation claim ($37,376,251) and the Terminal Building Company claim ($1,153,143). Objections to the interest on these claims were likewise filed by Morgan, however, and it appears that their counsel carried the principal burden of the litigation with respect to these claims, the interest on which was finally disallowed. Applicants spent considerable time on this matter, but their services largely duplicated those of counsel for Morgan. With respect to the Midamerica claims against CTB, applicants filed objections in August of 1937. Later that same

month special counsel was appointed to represent the debtor in connection with the Midamerica claims. Although the applicants instigated the attack on these claims and were doubtless of some assistance in opposing them, the major portion of their services in this connection must be regarded as duplicative of those rendered by special counsel appointed by the court. Any allowance of compensation to these applicants for services in connection with the reduction or elimination of claims should be confined mainly to reasonable compensation for the time spent (approximately 1000 hours) in obtaining partial subordination of the Morgan claim.

The expenses for which reimbursement is sought include a bill for $1,797.50 presented by Laubscher & Smith for accounting services rendered to the applicants at their request. It does not appear that any order was ever entered authorizing the employment of these accountants; the Master's order of November 9, 1937 merely authorized an examination of the books and records of CTB and its parent company through Laubscher & Smith. Although there is some authority for denying compensation to accountants or other experts employed without specific court authority (*In re Postal Telegraph & Cable Corporation*, 119 F. (2) 861 (C. C. A. 2d, 1941)), a reasonable allowance would appear to be permissible here. We suggest a reduction of $300 in the amount requested, however, in order to eliminate the charge for typing and checking accounting reports and to make an adjustment for the excessive amount of partners' time which is charged. The balance of the expense item includes an excessive amount of travel expenses. Abrams or Myerson made 30 round trips from Chicago to Cleveland, two to Washington and two to Cincinnati. Eighteen of the Cleveland trips were made after Stern had been retained as Cleveland counsel, and the necessity of such frequent trips during that period seems open to serious question. We suggest that the expenses

applicable to one of the Washington trips and half of the Cleveland trips made after Stern's retention as Cleveland counsel be eliminated from the requested amount. This reduction, together with the $300 reduction in the accountants' fee totals $786.84.